

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 753 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JAMNADAS ALIAS BABULAL GOVINDJI SINCE DECE.THRO'HEIRS
Versus

KHUSHALDAS ALIAS KARSHANDAS MATHURDAS SINCE DECD.THR.HEIRS

Appearance:

Mr. Hriday Buch for MR ND NANAVATI for Petitioners
Mr.Manoj N. Popat for Respondents

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 24/11/2000

ORAL JUDGEMENT

1. Appellant-original plaintiff, by filing this
appeal under Section 96 of the Code of Civil Procedure,
has challenged judgment and decree dated April 30, 1980,
passed by learned Second Joint Civil Judge (S.D.),

Junagadh, in Special Civil Suit No.81 of 1976.

2. The appellant had purchased the disputed house in S.Y.2026 by a registered sale deed and, accordingly, possession of the house was handed over to him by owner, Prabhudas Govindji. Initially, the suit was filed against tenant, Khushaldas Karsandas, who died during pendency of the suit. Thereafter, his heirs and legal representatives, i.e. the present respondents were brought on record. Deceased Khushaldas had filed Execution Petition No.99 of 1972 in the Court of Civil Judge, Maliya Hatina, against one Vithaldas Ratanshi, on the strength of a decree obtained by him against said Vithaldas Ratanshi in Regular Civil Suit No.175 of 1967. Regular Civil Suit No.175 of 1967 was filed by deceased Khushaldas who claimed to be tenant of the disputed property, against Vithaldas Ratanshi, who was sub-tenant of Khushaldas. Therefore, Regular Civil Suit No.175 of 1967 was between tenant and sub-tenant and, in that suit, landlord, Prabhudas Govindji or the present appellant, who had become subsequently owner of the property, were not joined as parties. It appears that, in Regular Civil Suit No.175 of 1967, a decree for possession was passed in favour of deceased Khushaldas and against sub-tenant, Vithaldas Ratanshi. In the execution petition filed pursuant to the decree for possession passed in Regular Civil Suit No.175 of 1967, the appellant filed his objection which came to be rejected by the executing court. In the objection filed by the appellant in the execution petition, it was contended that the decree which was obtained by the respondent to recover possession of the suit house was illegal, because, in the said suit, the original owner or the subsequent owner, i.e. the present appellant, were deliberately not joined as party and, therefore, the suit was not maintainable under the provisions of the Bombay Rent Act and the decree passed in Regular Civil Suit No.175 of 1967 was not executable. The appellant, in the present suit, contended that deceased Khushaldas had already vacated the suit house and handed over vacant and peaceful possession to the original owner, Prabhudas Govindji. According to the appellant, principle of 'lis-pendence' will not be applicable, as he had no knowledge regarding previous suit and the appellant was bona fide purchaser of the suit house with value without notice. It was contended by the appellant in the suit filed by him that deceased Khushaldas was never a tenant of the suit house and he had obtained a decree in collusion with Vithaldas Ratanshi behind his back and the said decree was obtained fraudulently. The appellant, therefore, filed Special Civil Suit No.81 of 1976 for a declaration that the

decree passed in Regular Civil Suit No.175 of 1967 without joining him as party was illegal, without jurisdiction, ineffective, null and void and not binding on the appellant and not executable against him. The appellant also prayed for a permanent injunction restraining the respondents from executing decree passed in Regular Civil Suit No.175 of 1967.

3. The respondents filed their written statement at Exh.13, inter alia, contending that the suit filed by the appellant was neither legal nor bona fide and not tenable. It was contended that the suit was time-barred and, therefore, it deserved to be dismissed. It was averred that the suit house was sold to the appellant during pendency of the previous suit and, in collusion with original owner, Prabhudas Govindji and Vithaldas Ratanshi, possession was handed over to the appellant. It was contended that, when execution petition was filed pursuant to the decree passed in Regular Civil Suit No.175 of 1967, the appellant was in possession of the suit house as representative of Vithaldas Ratanshi and, therefore, the respondents were entitled to recover possession of the suit house from the appellant. It was also contended that, in the execution petition, objections raised by the appellant and Prabhudas Govindji were rejected by the executing court which was also confirmed by the appellate court, i.e. District Court. It was further averred that, in order to delay proceeding of Execution Petition No.99 of 1972 and just to avoid handing over possession of the suit house, the plaintiff had filed this false suit. It was stressed that Vithaldas Ratanshi was not entitled to hand over possession of the suit house to the appellant. It was stated that the appellant was not a bona fide purchaser without notice and decree being legal and executable against the present appellant, the suit may be dismissed with costs.

4. On the basis of the rival pleadings of the parties, the trial court framed issues at Exh.24. After appreciating oral as well as documentary evidence, the trial court concluded that; (i) the plaintiff was not a bona fide purchaser without notice; (ii) the plaintiff had failed to prove that decree passed in Regular Civil Suit No.175 of 1967 was illegal, without jurisdiction, ineffective, null and void and not binding on him; and (iii) the respondents had proved that the plaintiff had taken possession of the suit house illegally from Vithaldas Ratanshi. On the basis of abovereferred to conclusions, the learned trial judge dismissed the suit for declaration and injunction filed by the appellant,

which has given rise to filing of this appeal.

5. Learned advocate Mr. Hriday Buch for Mr.N.D. Nanavati, for the appellant, learned advocate Mr. Manoj N. Popat for the respondents have taken me through entire record and proceeding of the present appeal. Learned advocate for the appellant has submitted that Regular Civil Suit No.175 of 1967 was not maintainable, as deceased Khushaldas who claimed to be tenant of the suit house had filed the said suit in collusion with Vithaldas Ratanshi, who claimed to be sub-tenant of the said house. It is contended that the suit between tenant and sub-tenant without joining landlord was not maintainable and, therefore, decree obtained in Regular Civil Suit No.175 of 1967 was not executable as the suit itself was not maintainable. Learned advocate for the appellant further submitted that original tenant, Khushaldas Karsandas, had already parted with possession of the suit house and had handed over it to original owner, Prabhudas, Govindji. It is contended that said Prabhudas Govindji being exclusive owner was entitled to sell the suit house to the appellant and actually had sold the house by a registered sale deed and handed over peaceful and vacant possession of the suit house to the appellant. It is contended that neither deceased Khushaldas Karsandas nor Vithaldas Ratanshi had right to claim possession of the suit house as they had already relinquished their title as tenant over the suit house. Learned advocate for the appellant further submitted that doctrine of 'lis pendence' will not apply because earlier suit filed by deceased Khushaldas Karsandas against Vithaldas Ratanshi was not maintainable and, in the suit, neither original owner, Prabhudas Govindji, nor the present appellant, were brought on record and, therefore, the decree passed in the said suit was not binding on the present appellant, who had become owner of the suit property during pendency of Regular Civil Suit No.175 of 1967. Learned advocate for the appellant further submitted that the present appellant had become lawful owner of the suit house and, therefore, the trial court ought to have decreed the suit for declaration and injunction.

6. Learned advocate for the respondents has contended that the respondents were tenants of the suit house which was leased to them by original owner, Prabhudas Govindji and they had never parted with possession of the suit house, but, for some time, Vithaldas Ratanshi, who was serving as Methaji/Accountant in the firm where the original tenant-deceased Khushaldas Karsandas had also served, was permitted to reside in the

said house for some time. It is contended that, as Vithaldas Ratanshi had not handed over the suit house after he left the service, the father of the respondents had filed Regular Civil Suit No.175 of 1967 for possession of the suit house from Vithaldas Ratanshi. Learned advocate for the respondent further submitted that the suit filed by the respondents was maintainable and decree passed in Regular Civil Suit No.175 of 1967 was executable. It is submitted by learned counsel that pursuant to the passing of decree for possession, Execution Petition No.99 of 1972 was filed in Maliya Hatina Court, and, in that proceeding, objections raised by the original owner and the present appellant were rejected. Learned advocate for the respondent further submitted that, on the doctrine of lis pendence, the decree passed in Regular Civil Suit no.175 of 1967 will be binding on the appellant and, therefore, the appeal may be dismissed with costs.

7. The submission of learned advocate for the appellant that Regular Civil Suit no.175 of 1967 filed by the original tenant against the alleged sub-tenant, Vithaldas Ratanshi, was not maintainable, as, essentially, it was a suit between tenant and sub-tenant in which without joining the owner, the Court could not have passed decree for possession, deserves to be accepted. The ancestor of the respondents had surrendered his title of tenancy in favour of landlord, Prabhudas Govindji, and had handed over vacant and peaceful possession of the suit house to the original owner. Therefore, the original owner was entitled to sell the said house to the appellant. After executing a sale deed, the appellant was put in possession of the suit house. The ancestor of the respondents, in collusion with Vithaldas Ratanshi, had filed Regular Civil Suit no.175 of 1967 without joining original owner or subsequent purchaser of the suit house and, therefore, in my view, the said suit was not maintainable. The respondents had knowledge that the suit property was purchased by the appellant, and, in spite of that fact, the appellant was not joined as party in Regular Civil Suit no.175 of 1967. The subsequent purchaser was a necessary party in the above suit and, in absence of the subsequent purchaser, who was in the possession of the suit property, no decree could have been passed for possession of the suit house. Neither the ancestor of the respondents nor Vithaldas Ratanshi were in possession when the decree was passed in Regular Civil Suit no.175 of 1967. In my view, the said decree in Regular Civil Suit no.175 of 1967 was obtained in collusion between so-called tenant and sub-tenant. Even otherwise the suit

was not maintainable as it would fall within Section 28 of the Bombay Rents And Lodging House Rates Control Act, 1947 because it was not a suit between the landlord and the tenant for recovering possession for arrears of rent and, therefore, the decree passed in the said suit cannot bind the present appellant. In view of the above legal position, the trial court ought to have granted declaration as prayed for by the appellant in Special Civil Suit No.81 of 1976 . The submission of the learned advocate for the respondents that doctrine of lis-pendence would apply in the present case and, therefore, the decree passed in Regular Civil Suit no.175 of 1967 was binding on the appellant, deserves to be rejected. As stated earlier, in spite of respondents having knowledge that the suit house was purchased by the appellant, he was deliberately not joined as party in Regular Civil Suit no.175 of 1967. As observed earlier, since the suit filed between the ancestor of the respondents and Vithaldas Ratanshi was not maintainable, the decree passed in the said suit was non-est. The original tenant, Khushaldas, had already parted with possession of the suit house and had surrendered his tenancy rights in favour of the original owner Prabhudas Govindji and, therefore, he had no locus and could not have filed Regular Civil Suit no.175 of 1967 claiming possession of the suit house. In my view, the suit for possession in Regular Civil Suit no.175 of 1967 was filed in collusion between original tenant and alleged sub-tenant, wherein, a collusive decree was passed, which, in my view, was illegal. As the suit itself was not maintainable, in my view, doctrine of 'lis-pendence' would not apply and the decree passed in the said suit cannot bind on the present appellant. Therefore, in my opinion, the trial court erred in not passing decree for declaration in favour of the appellant in Special Civil Suit No.81 of 1976 by declaring that the decree passed in Regular Civil Suit no.175 of 1967 was not binding on the appellant.

8. As a result of foregoing discussion, the appeal is allowed. The judgment and decree dated April 30, 1980, passed by learned Second Joint Civil Judge (S.D.), Junagadh, in Special Civil Suit No.81 of 1976, is quashed and set aside. Special Civil Suit No.81 of 1976 filed by the appellant is decreed. Decree be drawn accordingly. There shall be no order as to costs.

(M.H.Kadri, J.)

(swamy)

